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United Nations Commission on International Trade Law
Working Group I (MSMEs)
Twenty-sixth session
New York, 4-8 April 2016

Annotated provisional agenda

I. Provisional agenda

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2. Election of officers.
3. Adoption of the agenda.
4. Preparation of legal standards in respect of micro, small and medium-sized enterprises.
5. Other business.
6. Adoption of the report.

II. Composition of the Working Group

1. The Working Group is composed of all States members of the Commission, which are the following: Algeria (2016), Argentina (2016), Armenia (2019), Australia (2016), Austria (2016), Belarus (2016), Botswana (2016), Brazil (2016), Bulgaria (2019), Cameroon (2019), Canada (2019), China (2019), Colombia (2016), Côte d'Ivoire (2019), Croatia (2016), Czech Republic (2016), Denmark (2019), Ecuador (2019), El Salvador (2019), Fiji (2016), France (2019), Gabon (2016), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2016), Indonesia (2019), Iran (Islamic Republic of) (2016), Israel (2016), Italy (2016), Japan (2019), Jordan (2016), Kenya (2016), Kuwait (2019), Liberia (2019), Malaysia (2019), Mauritania (2019), Mauritius (2016), Mexico (2019), Namibia (2019), Nigeria (2016), Pakistan (2016), Panama (2019), Paraguay (2016), Philippines (2016), Poland (2016), Republic of Korea (2019), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2016), Switzerland (2019),

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Thailand (2016), Turkey (2016), Uganda (2016), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2016), Venezuela (Bolivarian Republic of) (2016) and Zambia (2019). The term of the membership expires on the last day prior to the beginning of the annual session of the Commission in the year indicated in parentheses.

2. States not members of the Commission and international governmental organizations may attend the session as observers and participate in the deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

III. Annotations to agenda items

Item 1. Opening of the session

3. The twenty-sixth session of Working Group I is scheduled to be held at United Nations Headquarters in New York from 4 to 8 April 2016. Meeting hours will be from 10:00 a.m. to 1:00 p.m. and from 3:00 p.m. to 6:00 p.m., except on Monday, 4 April 2016, when the session will commence at 10:30 a.m.

Item 2. Election of officers

4. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chair and a Rapporteur.

Item 4. Preparation of legal standards in respect of micro, small and medium-sized enterprises

1. Background information

5. At its forty-second session, in 2009, the Commission requested the Secretariat to prepare a detailed study including an assessment of the legal and regulatory issues at stake in the field of microfinance. The study was also to include proposals as to the form and nature of a reference document discussing the various elements required to establish a favourable legal framework for microfinance, which the Commission might in future consider preparing with a view to assisting legislators and policymakers around the world.[1]

6. The study, discussed at the forty-third session of the Commission, in 2010, considered the role of microfinance in poverty alleviation and achievement of the Millennium Development Goals by facilitating access to financial services for the poor who were not served by the formal financial system. On the understanding that an appropriate regulatory environment would contribute to the development of the microfinance sector, the Commission agreed that the Secretariat should convene a colloquium, with the possible participation of experts from other organizations working actively in that field, to explore the legal and regulatory issues surrounding microfinance that fell within the mandate of UNCITRAL. The colloquium was to

[1] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 432-433.

result in an official report outlining the issues at stake and containing recommendations on work that UNCITRAL might usefully undertake in the field.[2]

7. The colloquium, held in January 2011, resulted in a number of findings.[3] Despite some successful initiatives at the national level, there was no coherent set of global legal and regulatory measures that could serve as a standard for international best practice. Many States were struggling to find an appropriate regulatory framework to promote financial inclusion (the more current term for "microfinance"), and it was suggested that UNCITRAL could make a substantial contribution in this regard. Several issues were identified for future consideration,[4] of which the Commission, at its forty-fourth session, in 2011, chose the following for in-depth study by the Secretariat: (i) overcollateralization and the use of collateral with no economic value; (ii) e-money, including its status as savings; whether "issuers" of e-money were engaged in banking and hence what type of regulation they were subject to; and the coverage of such funds by deposit insurance schemes; (iii) provision for fair, rapid, transparent and inexpensive processes for the resolution of disputes arising from microfinance transactions; and (iv) facilitating the use of, and ensuring transparency in, secured lending to microenterprises and small and medium-sized enterprises. At that session, the Commission also agreed to include microfinance as an item for its future work.[5]

8. The study,[6] submitted at the forty-fifth session of the Commission, in 2012, provided a brief summary of the state of the matter in each of the four topics indicated above, as well as key legal and regulatory issues relating thereto, for consideration by the Commission. Following discussion, the Commission agreed to hold one or more colloquia on microfinance and related matters, as a matter of priority, with a focus on: facilitating simplified business incorporation and registration; access to credit for micro-businesses and small and medium-sized enterprises; dispute resolution applicable to microfinance transactions; and other topics related to creating an enabling legal environment for micro-businesses and small and medium-sized enterprises.[7]

9. The second colloquium on microfinance was held in Vienna in January 2013 with the participation of experts from all over the world including specialists from governments, international organizations, non-governmental organizations, the private sector and academia. The following topics were discussed: the enabling environment for micro, small and medium-sized enterprises (MSMEs) and the rule of law; incorporation and registration of micro-borrowers; effective alternative dispute resolution mechanisms for MSMEs; enabling legal environment for mobile payments; legal issues surrounding access to credit for MSMEs; and insolvency and winding up of MSMEs.[8]

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[2] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 274-280.

[3] See A/CN.9/727.

[4] Ibid., see para. 56.

[5] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 241-246.

[6] See A/CN.9/756.

[7] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 124-126.

[8] See A/CN.9/780; presentations made at the colloquium are available at www.uncitral.org/uncitral/en/commission/colloquia/microfinance-2013-papers.html.

10. At its forty-sixth session, in 2013, the Commission took note of the broad consensus among participants at the colloquium to recommend that a Working Group be established to address the legal aspects of creating such an enabling environment for MSMEs. Participants in the January 2013 colloquium identified five broad areas where it was thought the Commission could provide guidance, to be articulated so as to address the business cycle of MSMEs.[9] The starting point could be guidance that allowed for simplified business start-up and operating procedures. Other topics to be taken up subsequently could include the following: (i) a system for resolving disputes between borrowers and lenders, including taking into account possibilities for the use of online dispute resolution; (ii) effective access to financial services for MSMEs, including consideration of broadening the scope of UNCITRAL's existing instruments on e-commerce and international credit transfers to accommodate mobile payment systems; (iii) guidance on ensuring access to credit, addressing issues such as transparency in lending and enforcement in a range of lending transactions; and (iv) insolvency of MSMEs, aimed at fast-track procedures and business rescue options so as to develop workable alternatives to formal insolvency processes in line with both the key characteristics of an effective insolvency system and the needs of MSMEs. UNCITRAL's existing instruments as well as guidance already developed by international organizations were said to be suitable building blocks for work in these areas. As to the form the Commission guidance could take, the Commission was further advised that a flexible tool, such as a legislative guide or a model law according to the topics, would contribute to harmonizing efforts in this sector and provide momentum for reforms which would further encourage micro-business participation in the economy.

11. At its forty-sixth session (2013), the Commission also heard a proposal from the Government of Colombia[10] suggesting that the Commission could create a mandate for a new Working Group focused on the life cycle of a business, particularly in relation to micro and small-sized enterprises. It was suggested that the Working Group could begin with the facilitation of simplified business incorporation and registration, following which it could continue with other matters, such as those discussed at the 2013 colloquium, in order to create an enabling legal environment for this type of business activity.

12. The Commission agreed, at its forty-sixth session (2013), that work on reducing the legal obstacles faced by micro, small and medium-sized enterprises throughout their life cycle, in particular, in developing economies, should be added to the work programme of the Commission, and that such work should begin with a focus on the legal questions surrounding the simplification of incorporation.[11]

13. At its twenty-second session (New York, 10-14 February 2014), Working Group I (MSMEs) commenced its work according to the mandate received from the Commission as noted in paragraph 12 above. Based upon the issues raised in working paper A/CN.9/WG.I/WP.82, the Working Group engaged in preliminary discussion in respect of a number of broad issues relating to the development of a legal text on simplified incorporation.[12] Business registration was also said to be of

[9] See A/CN.9/780, paras. 49-55.

[10] See A/CN.9/790.

[11] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 321.

[12] See A/CN.9/800, paras. 34-38 and 42-46.

particular relevance in the future deliberations of the Working Group.[13] In order to make further progress, the Working Group requested the Secretariat to prepare a document setting out best practices in respect of business registration, as well as a template on simplified incorporation and registration to provide the basis for drafting a possible model law, without discarding the possibility of the Working Group drafting different legal instruments, particularly, but not exclusively, as they applied to MSMEs in developing countries.[14] In addition, a document was to be prepared by States outlining their experience in respect of alternative approaches to the challenges of simplified incorporation and supporting MSMEs.[15]

14. At its forty-seventh session, in 2014, the Commission reaffirmed the mandate of the Working Group, relative to reducing the legal obstacles faced by MSMEs throughout their life cycle, in particular those in developing economies, beginning with a focus on the legal questions surrounding the simplification of incorporation,[16] as agreed at the forty-sixth session of the Commission, in 2013.[17]

15. At its twenty-third session (Vienna, 17-21 November 2014), Working Group I continued its work according to the mandate received from the Commission. Following a discussion of the issues raised in working paper A/CN.9/WG.I/WP.85 in respect of best practices in business registration, and presentations by the Corporate Registers Forum, the European Business Register and the European Commerce Register's Forum,[18] the Working Group agreed to continue its work on business registration by further exploring the relevant key principles.[19] To that end, the Working Group requested the Secretariat to prepare further materials based on parts IV and V of working paper A/CN.9/WG.I/WP.85 for discussion at a future session. In its discussion of the legal questions surrounding the simplification of incorporation, the Working Group heard a presentation by the secretariat of the Financial Action Task Force (FATF) on its standard-setting activity to combat money-laundering, terrorist financing and other illicit activity,[20] as well as presentations by States of the information in working paper A/CN.9/WG.I/WP.87 on possible alternative legislative models to assist MSMEs.[21] The Working Group then proceeded to explore the legal questions surrounding the simplification of incorporation by considering the issues outlined in the framework set out in working paper A/CN.9/WG.I/WP.86,[22] and agreed that it would resume its deliberations at its twenty-fourth session beginning with paragraph 34 of A/CN.9/WG.I/WP.86.

16. At its twenty-fourth session (New York, 13 to 17 April 2015), the Working Group continued its discussion on the legal questions surrounding the simplification of incorporation. After initial consideration of the issues as set out in

[13] Ibid., paras. 47-50.
[14] Ibid., para. 65.
[15] Ibid., para. 65, and A/CN.9/825, paras. 56-61.
[16] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 134.
[17] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 321.
[18] See Report of Working Group I (MSMEs) on the work of its twenty-third session, A/CN.9/825, paras. 12-38.
[19] Ibid., paras. 39-46.
[20] Ibid., paras. 47-55.
[21] Ibid., paras. 56-61.
[22] Ibid., paras. 62-79.

working paper A/CN.9/WG.I/WP.86, the Working Group decided that it should continue its work by considering the first six articles of the draft model law and commentary thereon contained in Working Paper A/CN.9/WG.I/WP.89, without prejudice to the final form of the legislative text, which had not yet been decided. Further to a proposal from several delegations, the Working Group agreed to discuss the issues included in A/CN.9/WG.I/WP.89 bearing in mind the general principles outlined in the proposal, including the "think small first" approach, and to prioritize those aspects of the draft text in A/CN.9/WG.I/WP.89 that were the most relevant for simplified business entities. The Working Group also agreed that it would discuss the alternative models introduced in A/CN.9/WG.I/WP.87 at a later stage.

17. At its forty-eighth session, in 2015, the Commission noted the progress made by the Working Group in the preparation of legal standards in respect of the legal issues surrounding the simplification of incorporation and to good practices in business registration, both of which aimed at reducing the legal obstacles faced by MSMEs throughout their life cycle. After discussion, the Commission reaffirmed the mandate of the Working Group under the terms of reference established by the Commission at its forty-sixth session in 2013 and confirmed at its forty-seventh session in 2014.[23]

18. At its twenty-fifth session (Vienna, 19 to 23 October 2015), Working Group I continued its exploration of the legal issues surrounding the simplification of incorporation and on good practices in business registration. In respect of the latter, following a consideration of the issues outlined in working paper A/CN.9/WG.I/WP.93 and taking into account a presentation by UNCTAD on its work on business registration and facilitation, the Working Group decided that work should proceed along the lines of a concise legislative guide on key principles in business registration, without prejudice to considering other possible legislative texts at a later stage. To that end, the Secretariat was requested to prepare a set of draft recommendations to be considered by the Working Group when it resumed its consideration of working papers A/CN.9/WG.I/WP.93, Add.1 and Add.2 at its next session.[24] In respect of the legal issues surrounding the simplification of incorporation, the Working Group resumed its consideration of the draft model law on a simplified business entity as contained working paper A/CN.9/WG.I/WP.89. the Working Group considered Chapter VI on organization of the simplified business entity, Chapter VIII on dissolution and winding up, Chapter VII on restructuring, and draft article 35 on financial statements (contained in Chapter IX on miscellaneous matters).[25] The Working Group agreed to continue discussion of the draft text in Working Paper A/CN.9/WG.I/WP.89 at its next session, commencing with Chapter III on shares and capital, and continuing with Chapter V on shareholders' meetings.

2. Documentation for the twenty-sixth session

19. The Working Group will have before it, and may wish to use as a basis for its consideration the following documents: (a) notes prepared by the

[23] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 321, and *Seventieth session, Supplement No. 17* (A/70/17), paras. 225 and 340.

[24] See Report of Working Group I (MSMEs) on the work of its twenty-fifth session, A/CN.9/860, para. 73.

[25] Ibid., paras. 76 to 96.

Secretariat for the current session of the Working Group containing draft recommendations on key principles of business registration (A/CN.9/WG.I/WP.96 and A/CN.9/WG.I/WP.96/Add.1); (b) notes prepared by the Secretariat for the twenty-third, twenty-fourth and twenty-fifth sessions of the Working Group regarding: (i) reducing the legal obstacles faced by MSMEs (A/CN.9/WG.I/WP.92); (ii) key principles of business registration (A/CN.9/WG.I/WP.93, Add.1 and Add.2); (iii) legal questions surrounding the simplification of incorporation (A/CN.9/WG.I/WP.86); (iv) a draft model law on a simplified business entity (A/CN.9/WG.I/WP.89); and (v) best practices in business registration (A/CN.9/WG.I/WP.85); and (c) such other documents that may be officially submitted by States after the date of this provisional agenda.

20. In planning the attendance of their representatives, States and interested organizations may also wish to consider the following background documents:

(a) Reports of Working Group I (MSMEs) on the work of its twenty-second, twenty-third, twenty-fourth and twenty-fifth sessions (A/CN.9/800, A/CN.9/825, A/CN.9/831 and A/CN.9/860, respectively);

(b) Notes of the Secretariat on selected activities of international and intergovernmental organizations to promote MSMEs (A/CN.9/WG.I/WP.81) and on features of simplified business incorporation regimes in selected States (A/CN.9/WG.I/WP.82);

(c) Observations by Colombia concerning the Colombian Simplified Corporation (A/CN.9/WG.I/WP.83); by Italy and France on Possible Alternative Legislative Models for Micro and Small Businesses (A/CN.9/WG.I/WP.87); and by Germany (A/CN.9/WG.I/WP.90) and France (A/CN.9/WG.I/WP.94) providing additional information for the deliberations of the Working Group; and

(d) *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 316-322; *Sixty-ninth Session* (A/69/17), paras. 131-134; and *Seventieth Session* (A/70/17), paragraphs 220-225 and 339-340 concerning the work of Working Group I.

21. UNCITRAL documents are posted on the UNCITRAL website (www.uncitral.org) upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

Item 6. Adoption of the report

22. The Working Group may wish to adopt, at the close of its session, a report for submission to the forty-ninth session of the Commission, scheduled to be held in New York, from 27 June to 15 July 2016. The main conclusions reached by the Working Group at its ninth meeting (on Friday morning) will be summarily read out for the record at the tenth meeting and subsequently incorporated into the report.

IV. Scheduling of meetings

23. The Working Group's twenty-sixth session will span five working days. There will be ten half-day meetings available for consideration of the agenda items. The Working Group may wish to note that, consistent with decisions made by the Commission at its thirty-fourth session,[26] the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with a draft report on the entire period being prepared by the Secretariat for adoption at the tenth and last meeting of the Working Group (on Friday afternoon).

24. In order to facilitate the planning of attendance by representatives of States and interested organizations, the Working Group decided at its twenty-fifth session[27] that it would devote its deliberations from 4 to 5 April 2016 to a continuation of the discussion from its twenty-fifth session in respect of simplified business entities, and its deliberations from 6 to 7 April 2016 to a consideration of draft recommendations and commentary on key principles and good practices in business registration, as requested at the twenty-third session of the Working Group[28] and reconfirmed at its twenty-fifth session.[29]

25. The Working Group may wish to note that its twenty-seventh session is to be held in Vienna and is tentatively scheduled from 3 to 7 October 2016.

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[26] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and *Corrigendum* (A/56/17 and Corr.3), para. 381.

[27] See Report of Working Group I (MSMEs) on the work of its twenty-fifth session, A/CN.9/860, para. 96.

[28] See Report of Working Group I (MSMEs) on the work of its twenty-third session, A/CN.9/825, paras. 43-46.

[29] See Report of Working Group I (MSMEs) on the work of its twenty-fifth session, A/CN.9/860, para. 73.